RESPONSE

Rejection under 35 USC 102(b)

The Examiner has rejected Claims 1, 5, 6, and 11-12 under 35 USC 102(b) as being anticipated by von der Eltz et al. (US Patent 3,990,839).

The Examiner states that "Von der Eltz et al. teaches a process for shadow dyeing polyester fabrics. In this process, polyester warp yams are dyed with cellulosic weft yarns that remain undyed (col. 1, lines 16-36)."

Applicant submits that the Von der Eltz et al. reference does not teach that the warp of the fabric is homogeneous or that the filling is also homogeneous but of a different material from the warp. Because the reference does not show all the limitations of the Applicant's claim, the rejection is believed to be improper and should be withdrawn. Rejections of dependent claims 5, 6, 11, and 12, which depend from Claim 1 and have the same limitations as Claim 1, should also be withdrawn.

The Examiner has rejected Claims 1, 4, and 11-13 under 35 USC 102(b) as being anticipated by Gadoury (US Patent 5,830,574).

The Examiner states that "Gadoury teaches that synthetic melamine fiber and cellulose fiber can be woven together and dyed so that either the synthetic fiber or the cellulose fiber is dyed and the other remains undyed giving a chambray appearance (Abstract). In one embodiment (col. 6, lines 20-40), the synthetic melamine is dyed and the cellulose fiber remains undyed. As to claim 4, the fabric is woven into a plain weave (col. 14, lines 65-66). As to claims 11-13, the examples disclosed in the patent use cotton that has a cotton count of 12 (col. 14, lines 63-65)."

Applicant submits that the Gadoury reference does not teach that the warp of the fabric is homogeneous or that the filling is also homogeneous but of a different material from the warp. In Column 6, lines 30-33, Gadoury appears to teach away from Applicant's invention, by stating that "it is not necessary to weave the fabric using one fiber type as a warp and the other as the weft (as with denim fabrics) to obtain this result." Because the reference does not show all the limitations of the Applicant's claim, the rejection is believed to be improper and should be withdrawn. Rejections of dependent claims 4, 11, 12, and 13, which depend from Claim 1 and have the same limitations as Claim 1, should also be withdrawn.

Rejection under 35 USC 103

Claims 2, 3, 7-10, and 14 are rejected under 35 USC 103(a) as being unpatentable over von der Eltz et al.

The Examiner's argument is as follows:

> "Von der Eltz et al. teach a fabric with dyed polyester warp yarns and undyed cellulosic weft yarn. However, Von der Eltz et al. do not teach specific yarn sizes and fabric weight in the patent. It would have been obvious to one

skilled in the art to select various yarn properties such as weight, yarn denier, cotton count, and stretch in order to produce a fabric that can be used for shirts, dresses, clothing, or other apparel applications, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Specifically, it would be obvious to select a stretch quality as in claim 2, a fabric weight as in claim 3, filament yarns with a certain denier as in claim 7, spun yarns with a certain cotton count as in claims 8-10 and 14, or a combination thereof as in claim 15 to obtain a desired fabric texture."

Von der Eltz et al. is concerned with the dyeing of polyester warps and then weaving of the polyester warps with undyed or differently dyed weft yarns. The process includes "binding the piece goods to a rope with or without distortion in warp direction, tying them loosely and spraying them irregularly and unevenly from outside with aqueous solutions of alkalis which are free from oxidizing or reducing chemicals, thermosoling them after opening the rope to fix the dyestuff and after-treating them in the usual manner." (Col. 1, lines 20-35) The resultant fabric created by Von der Eltz et al. is a fabric that has "irregular tone-in-tone effects, shadow effects, or multi-color effects" (claim 1). Therefore, Applicant respectfully submits that the process described in this patent would not have yielded the product described and claimed by Applicant.

This reference does not teach the creation of a chambray fabric, which is produced by preferential dyeing of either the warp or fill yarns. Applicant's disclosure addresses the problem of inconsistent or irregular color by eliminating the requirement of pre-dyed yarn packages (see specification, page 2, lines 9-13). Further, Applicant states on page 8, line 22, that "it has been found that open-end spinning produces fabric 4 with a more uniform appearance." Clearly, the objective of Applicant's invention is different from that of Von der Eltz et al., which teaches away from a uniform fabric appearance.

Applicant submits that the stretch quality, fabric weight, yarn deniers, and yarn cotton counts are not obvious in light of the Von der Eltz et al. reference. There are no teachings in the reference to suggest the Applicant's optimum values for these attributes, nor is there any teaching to suggest that modification of these features would have been obvious to one of skill in the art.

As such, Applicant respectfully submits that the Examiner's rejection under 35 USC 103(a) is improper and requests that such rejections be withdrawn.

CONCLUSION

Having amended the Claims to address the Examiner's rejections, Applicant submits that the case is in condition for allowance, and hereby requests the issuance of a Formal Notice of Allowance.